

CALIFORNIA ENERGY COMMISSION

1516 NINTH STREET
SACRAMENTO, CA 95814-5512

STATEMENT OF MAILING NOTICE
(Section 86 of Title 1 of the
California Code of Regulations)

Docket No. 01-SIT-1

The California Energy Commission has complied with the provisions Government Code section 11346.4, (a)(1) through (4) regarding the mailing of the notice of proposed regulatory action. The **Notice of Proposed Action for Adoption of Procedural Clarifications to the Energy Commission's Power Plant Siting Regulations** was mailed on October 19, 2000 to the attached list, over 45 days prior to both the close of the comment period and the public hearing scheduled for December 19, 2001. A copy was also sent to the Secretary of the Resources Agency and placed on the Energy Commission's web site.

Dated: October 18, 2001

Richard K. Buell
Senior Project Manager

NOTICE OF PROPOSED ACTION

FOR ADOPTION OF PROCEDURAL CLARIFICATIONS
TO THE ENERGY COMMISSION'S
POWER PLANT SITING REGULATIONS

Docket No. 01-SIT-1
October 2001

The California Energy Commission ("Commission") proposes to adopt procedural clarifications to its regulations for Applications for Certification in Title 20, California Code of Regulations. The proposed actions are taken under the authority of sections 25213 and 25218(e) of the Public Resources Code. These regulations would implement, interpret, and make specific various sections of the Warren-Alquist Act. (Public Resources Code, sections 25000 et seq.)

The Energy Commission distributed initial proposed changes to its regulations for public comment and discussion at a workshop on July 23, 2001. Based on the public comment received in writing and at the workshop, several of the originally-proposed amendments have changed substantially, and are now essentially clarifications of existing practice.

NOTICE THAT A PUBLIC HEARING IS SCHEDULED:

The date set for the adoption of regulations at a public hearing is as follows:

Commission Business Meeting
December 19, 2001, beginning at 10:00 a.m.
California Energy Commission
Hearing Room A
1516 9th Street
Sacramento, CA 95814

Hearing Room A is wheelchair-accessible.

ORAL AND WRITTEN STATEMENTS

Interested persons may present oral and written statements about the proposed regulations at the hearing, or may submit written comments to the Commission on or prior to December 3, 2001 by mailing them to:

Docket Unit

California Energy Commission
Docket No. 01-SIT-1
1516 9th Street, MS-4
Sacramento, CA 95814

Or e-mailing them to: DOCKET@energy.state.ca.us
Or faxing them to Dockets at (916) 654-4354

COPIES OF THE INITIAL STATEMENT OF REASONS AND THE TEXT

The Commission has prepared an initial statement of reasons for the proposed regulations. To obtain a copy of the initial statement of reasons or the express terms, please contact Richard Buell at (916) 653-1614 or by e-mail at rbuell@energy.state.ca.us. Additionally, the Commission has available all the information upon which the proposed regulations are based; to obtain copies, please contact the Docket Office at the above address or by calling (916) 654-5076.

INTERNET ACCESS

The Energy Commission's website will contain materials regarding this rulemaking proceeding. It can be accessed at the following address:
<http://www.energy.ca.gov/siting/rulemaking/index.html>.

COPY OF THE FINAL STATEMENT OF REASONS

At the conclusion of the rulemaking, persons may obtain a copy of the final statement of reasons by contacting Richard Buell at (916) 653-1614 or by e-mail at rbuell@energy.state.ca.us.

POSSIBLE CHANGES

If the Commission considers changes to the proposed regulations pursuant to Government Code section 11346.8, and the changes are sufficiently related to the original text and within the scope of this Notice, a full copy of the text will be available for review at least 15 days prior to the date on which the Commission adopts or amends the resulting regulations.

PUBLIC ADVISOR

The Commission's Public Advisor's Office is available to assist any person who wishes to participate in this proceeding. For assistance from the Public Advisor's Office, please call (916) 654-4489 or toll-free in California at (800) 822-6228.

CONTACT PERSONS

Inquiries concerning all aspects, including the substance of the proposed regulations should be directed to Richard Buell, Project Manager, at (916) 653-1614 or by e-mail at rbuell@energy.state.ca.us.

Mr. Buell's designated backup contact person is Chris Tooker, who can be reached at (916) 653-1634.

INFORMATIVE DIGEST

The Warren-Alquist State Energy Resources Conservation and Development Act (Public Resources Code Section (PRC) 25000 et seq.) created the Commission and vested it with a wide range of duties and responsibilities related to the development and conservation of energy resources in California. Included in the Commission's responsibilities is the siting of thermal electric generating facilities of 50 megawatts (MW) or greater generating capacity.

The proposed amendments would clarify and update the siting process by making the following changes:

Sections 1212(c) and 1712(b): Clarifying the Powers of the Presiding Committee Member and Rights of Intervenors

The Presiding Member has authority under section 1203(c) to regulate the conduct of siting case hearings, including admitting or excluding evidence based upon relevancy.

The proposed amendments to sections 1212(c) and 1712(b) would clarify that the Presiding Member's existing authority applies to these sections, including the power to determine "relevancy".

Section 1712(b) would also be amended to further clarify the rights of intervenors.

Clarifying the Noticing Requirements for Workshops

Existing section 1710 requires all meetings, workshops, conferences, etc. to be open to the public, but provides for a narrow exception for the informal exchange of information between an applicant and the staff or their discussion of procedural issues. The proposed amendment to section 1710(a) would clarify the circumstances under which public notice is required and not required. It would expand the exception to apply to all parties. The proposed amendment would also clarify that all discussions with the staff regarding substantive issues relative to recommendations and conditions must be publicly noticed.

Existing section 1710(h), which currently allows informal exchanges of information and procedural discussions only between an applicant and the staff without notice, would be repealed. The substance of this provision, expanded to apply to all parties would be placed in the amended section 1710(a). The term "information" would be defined for the first time. Further clarification would be provided to allow staff meetings with other governmental agencies, other than parties, without public notice.

Other portions of section 1710 would be clarified to specify that they apply only to publicly noticed events, and to delete duplicative language regarding continuances.

Conforming changes would also be made to section 1718. This includes allowing for greater flexibility in the location of public workshops in section 1718(b).

Clarifying the Role of Commission Staff in Relationship to Other Agencies.

Commission staff currently tries to avoid duplication, normally relying upon the comments of other agencies submitted in accordance with a variety of regulations, including sections 1714, 1714.3, and 1714.5. As an independent party and pursuant to the Commission's lead agency authority under the California Environmental Quality Act, staff may also disagree with any agency comment or recommendation.

The proposed amendment adding section 1714.5(d) would clarify existing Commission staff policy to give due deference to agency comments regarding conformance of a proposed powerplant to an agency's own laws, ordinances, and standards. As is the case now, staff would not be bound by any such comment it considered to be erroneous on the merits.

Deleting Outdated Language on Demand Conformance

The Legislature has repealed the requirement that the Commission make a finding regarding "need" for a power plant in its final decision. Demand conformance is thus no longer even considered as part of the licensing process. However, several regulations pertaining to demand conformance findings and requirements remain. None of these provisions currently have any regulatory effect. The proposed amendments would delete them from sections 1741(b)1, 1748(d), and 1752(a).

Clarifying Applicability of the Existing Six-Month AFC Regulations

The Energy Commission adopted regulations beginning at section 2021 that implement the six-month AFC process created by the Legislature in Public Resources Code section 25550. Section 2021(b) currently states that it applies to applications filed pursuant to Public Resources Code section 25550.

Subsequently, the Legislature essentially created another six-month AFC statute at Public Resources Code section 25550.5 for repowering projects, where existing powerplants are modernized. This statute is similar to Public Resources Code section 25550.

The proposed amendment would eliminate any possible confusion by specifying that the six month AFC process beginning at section 2021 also applies to repowering projects filed under Public Resources code section 25550.5.

Minor Clarifications and Corrections

The proposed amendments would also make a number of minor, non-substantive corrections and clarifications to the siting regulations.

NO INCORPORATION BY REFERENCE

The proposed regulations would not incorporate any documents by reference.

SMALL BUSINESS IMPACTS

The Commission concludes that the proposed regulations would not affect small business. The proposed regulations would be purely procedural clarifications and would impose no requirements upon any business. Improvements and clarifications to the Commission's siting process will benefit the entire state, including small business, by helping to solve California's electricity shortage problem.

LOCAL MANDATE DETERMINATION

If adopted, the proposed regulations would not impose a mandate on local agencies or school districts.

COST/SAVINGS ESTIMATE

There would be no costs or savings to any state agency, and no costs to any local agencies or school districts that are required to be reimbursed under Government Code section 17500 et seq., resulting from the proposed regulations. There would be no other non-discretionary cost or savings imposed

on local agencies and no cost or savings in federal funding to the state.

INITIAL DETERMINATION - ECONOMIC IMPACT ON BUSINESSES

The California Energy Commission hereby declares that it has made an initial determination that the proposed procedural changes to the siting regulations will not have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

This initial determination is based upon (1) the fact that the proposed regulations would merely clarify Energy Commission procedures, and result in no additional burdens, duties, or costs upon powerplant applicants; and (2) the Commission and its staff are unaware of any legitimate cause and effect relationship between the proposed procedural clarifications and a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

The Energy Commission believes any clarifications and procedural efficiencies resulting from the proposed regulations would assist in the prompt licensing of powerplants in accordance with the Commission's statutory responsibilities and the Governor's Executive Orders.

ASSESSMENT REGARDING JOBS AND BUSINESSES

The Commission's assessment is that the proposed procedural clarifications to the siting regulations would have no effect on the creation or elimination of California jobs and no effect on the creation of new business or the elimination or expansion of existing business within California. The number of powerplants applied for, licensed, and then built would not be changed by the proposed regulations.

The proposed regulations would require no new reports.

POTENTIAL FOR ADVERSE IMPACTS ON BUSINESS AND INDIVIDUALS

The Commission's assessment is that the proposed procedural clarifications to the siting regulations would have no potential for adverse economic impact on California business enterprises and individuals.

The Commission's further assessment is that the proposed actions would avoid the imposition of unnecessary or unreasonable regulations or reporting, recordkeeping, or

compliance requirements. The proposed procedural clarifications would include no reporting, recordkeeping, or compliance requirements of any kind.

CONSIDERATION OF ALTERNATIVE PROPOSALS

Before adopting the proposed regulations, the Commission must determine that no reasonable alternative considered by it, or that has otherwise been identified and brought to the attention of the Commission, would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action. To date the Commission is not aware of any alternatives that would be more effective and/or less burdensome than the proposed regulations.

IMPACT ON HOUSING COSTS

If adopted, the proposed regulations would not have an effect on housing costs.

COST IMPACT ON PRIVATE PERSONS AND BUSINESSES

The Energy Commission is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

RELATIONSHIP TO FEDERAL REGULATIONS

There are no comparable federal regulations or statutes to the Energy Commission's procedural requirements for licensing power plants in California. Furthermore, no federally mandated regulation or amendment is being proposed.

STATUTORY AUTHORITY AND REFERENCE

Authority: Sections 25213, 25218(e), Public Resources Code.

Reference: Sections 21081, 25210, 25214, 25216.5(a), 25217(b), 25500, 25519, 25521, 25523, 25550 and 25550.5, Public Resources Code.

CALIFORNIA ENERGY COMMISSION

Date: _____

ROBERT A. LAURIE
Commissioner and Presiding Member,
Energy Facility Siting and Environmental
Committee